

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSMOS GRANITE (WEST), LLC, a
Washington limited liability company,

Plaintiff,

v.

MINAGREX CORPORATION, d/b/a MGX
Stone,

Defendant.

Case No. C19-1697RSM

ORDER DENYING STIPULATED
MOTION TO PRESENT REMOTE
TESTIMONY AT TRIAL

This matter comes before the Court on the “Stipulated Motion to Present Remote Testimony at Trial,” Dkt. #216. The parties seek a “a pre-trial ruling pursuant to Rule 43(a) of the Federal Rules of Civil Procedure permitting non-party witnesses who reside more than 100 miles from Seattle to testify remotely via videoconference.” Dkt. #216 at 1. Some witnesses are listed who might qualify, but the parties actually seek a blanket ruling. *See Id.* at 2–3 (“the instant stipulation reflects only the Parties’ agreement that witnesses—should the Court agree to permit them to testify—who reside more than 100 miles from Seattle may testify remotely.”). Travelling during the COVID-19 pandemic is referenced generally, as well as the risk of having too many individuals in the courtroom, and the cost of travel. *See id.* at 3–4. There are no details provided for individual witnesses. No declarations are attached.

ORDER DENYING STIPULATED MOTION TO PRESENT REMOTE TESTIMONY AT
TRIAL - 1

1 At trial, the witnesses' testimony must be taken in open court
2 unless a federal statute, the Federal Rules of Evidence, these rules,
3 or other rules adopted by the Supreme Court provide otherwise.
4 For good cause in compelling circumstances and with appropriate
safeguards, the court may permit testimony in open court by
contemporaneous transmission from a different location.

5 Fed. R. Civ. P. 43(a).

6 The Parties cite to this Rule's Advisory Committee Note (1996 Amendment) for the
7 proposition that "where, as here, all parties agree that testimony should be presented remotely,
8 '[g]ood cause and compelling circumstances may be established with relative ease.'" Dkt.
9 #216 at 3. The next few sentences in the Note are helpful:
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11 The court is not bound by a stipulation, however, and can insist on
12 live testimony. Rejection of the parties' agreement will be
13 influenced, among other factors, by the apparent importance of the
testimony in the full context of the trial.

14 A party who could reasonably foresee the circumstances offered to
15 justify transmission of testimony will have special difficulty in
16 showing good cause and the compelling nature of the
circumstances.

17 Fed. R. Civ. P. 43, Advisory Committee Note (1996 Amendment).

18 As the Court explained at the pretrial conference on April 19, 2022, the Court prefers
19 live testimony and must be convinced why remote testimony is necessary. To clarify, this
20 means providing compelling evidence specific to each witness. Given the Court's discretion to
21 manage courtroom proceedings, it will not grant the parties carte blanche to call witnesses
22 remotely.
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24 A general citation to the COVID-19 pandemic is insufficient for any witness. Although
25 the risks associated with the pandemic are real, this has not stopped many Americans from
26 traveling 100 miles or more for business or pleasure. The parties must point to specifics, *e.g.*,
27 the unique health issues of a witness.
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1 The Court is particularly dissatisfied with the citation to the costs of travel as a reason
2 for remote testimony. The Advisory Note states:

3 The importance of presenting live testimony in court cannot be
4 forgotten. The very ceremony of trial and the presence of the
5 factfinder may exert a powerful force for truth-telling. The
6 opportunity to judge the demeanor of a witness face-to-face is
7 accorded great value in our tradition. Transmission cannot be
8 justified merely by showing that it is inconvenient for the witness
9 to attend the trial.

10 Fed. R. Civ. P. 43, Advisory Committee Note (1996 Amendment).

11 Given all of the above, and having reviewed the relevant briefing and the remainder of
12 the record, the Court hereby finds and ORDERS that the Stipulated Motion to Present Remote
13 Testimony at Trial, Dkt. #216, is DENIED.

14 DATED this 30th day of June, 2022.

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17 RICARDO S. MARTINEZ
18 CHIEF UNITED STATES DISTRICT JUDGE
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